[Syllabus]

SECOND DIVISION

[G.R. No. 120817. November 4, 1996]

ELSA B. REYES, *petitioner, vs.* COURT OF APPEALS, SECRETARY OF JUSTICE, AFP-MUTUAL BENEFIT ASSOCIATION, INC., and GRACIELA ELEAZAR, *respondents*.

D E C I S I O N

TORRES, JR., *J.*:

Petitioner assails the respondent courts decision[1] dated May 12, 1995 which sustained the two resolutions of the respondent Secretary of Justice, namely: 1) the Resolution dated January 23, 1992 affirming the resolution of the Provincial Prosecutor of Rizal dismissing the complaints of petitioner against private respondent Eleazar in I.S. Nos. 91-2853, 91-4328 to 29, 91-4585 to 91 and 91-4738 to 39 for violations of B.P. Blg. 22 and estafa under Article 315, par. 4, no. 2 (d) of the Revised Penal Code, and 2) the Resolution dated January 12, 1993 affirming the resolution of the City Prosecutor of Quezon City finding a *prima facie* case in I.S. No. 92-926 for violation of B.P. Blg. 22 and estafa filed by respondent AFP-Mutual Benefit Association, Inc. (AFP-MBAI, for brevity) against petitioner Reyes.

The facts as summarized by the respondent court are as follows:

Elsa Reyes is the president of Eurotrust Capital Corporation (EUROTRUST), a domestic corporation engaged in credit financing. Graciela Eleazar, private respondent, is the president of B.E. Ritz Mansion International Corporation (BERMIC), a domestic enterprise engaged in real estate development. The other respondent, Armed Forces of the Philippines Mutual Benefit Asso., Inc. (AFP-MBAI), is a corporation duly organized primarily to perform welfare services for the Armed Forces of the Philippines.

A. Re: Resolution dated January 23, 1992

In her various affidavits-complaints with the Office of the Provincial Prosecutor of Rizal, Elsa Reyes alleges that Eurotrust and Bermic entered into a loan agreement. Pursuant to the said contract, Eurotrust extended to Bermic ₱216,053,126.80 to finance the construction of the latters Ritz Condominium and Gold Business Park. The loan was without collateral but with higher interest rates than those allowed by the banks. In turn, Bermic issued 21 postdated checks to cover payments of the loan packages. However, when those checks were presented for payment, the same were dishonored by the drawee bank, Rizal Commercial Banking Corporation (RCBC), due to stop payment order made by Graciela Eleazar. Despite Eurotrusts notices and repeated demands to pay, Eleazar failed to make good the dishonored checks, prompting Reyes to file against her several criminal complaints for violation of B.P. 22 and estafa under Article 315, 4th paragraph, No. 2 (d) of the Revised Penal Code.

Graciela Eleazar, in her counter-affidavits, asserts that beginning December 1989, Eurotrust extended to Bermic several loan packages amounting to ₱190,336,388.86. For its part, Bermic issued several postdated checks to cover payments of the principal and interest of every loan packages involved.

Subsequently, Elsa Reyes was investigated by the Senate Blue Ribbon Committee. She was involved in a large scale scam amounting to millions of pesos belonging to Instructional Material Corporation (IMC), an agency under the Department of Education, Culture and Sports.

Meanwhile, respondent AFP-MBAI which invested its funds with Eurotrust, by buying from it government securities, conducted its own investigation and found that after Eurotrust delivered to AFP-MBAI the securities it purchased, the former borrowed the same securities but failed to return them to AFP-MBAI; and that the amounts paid by AFP-MBAI to Eurotrust for those securities were in turn lent by Elsa Reyes to Bermic and others.

When Eleazar came to know that the funds originally loaned by Eurotrust to Bermic belonged to AFP-MBAI, she, as President of Bermic, requested a meeting with Eurotrust representatives. Thus, on February 15,1991, the representatives of Eurotrust and Bermic agreed that Bermic would directly settle its obligations with the real owners of the fund-AFP-MBAI and DECS-IMC. This agreement was formalized in two letters dated March 19, 1991. Pursuant to this understanding, Bermic negotiated with AFP-MBAI and DECS-IMC and made payments to the latter. In fact, Bermic paid AFP-MBAI ₱31,711.11 and a check of ₱1-million.

However, Graciela Eleazar later learned that Elsa Reyes continued to collect on the postdated checks issued by her (Eleazar) contrary to their agreement. So, Bermic wrote to Eurotrust to hold the amounts in constructive trust for the real owners. But Reyes continued to collect on the other postdated checks dated April 17 to June 28, 1991. Upon her counsels advise, Eleazar had the payment stopped. Hence, her checks issued in favor of Eurotrust were dishonored.

After investigation, the Office of the Provincial Prosecutor of Rizal issued a resolution dismissing the complaints filed by Elsa Reyes against Graciela Eleazar on the ground that when the latter assumed the obligation of Reyes to AFP-MBAI, it constituted novation, extinguishing any criminal liability on the part of Eleazar.

Reyes filed a petition for review of the said resolution with respondent Secretary of Justice contending that novation did not take place.

The Secretary of Justice dismissed the petition holding that the novation of the loan agreement prevents the rise of any incipient criminal liability since the novation had the effect of canceling the checks and rendering without effect the subsequent dishonor of the already cancelled checks.

B. Re: Resolution dated January 12, 1993

At the time of the pendency of the cases filed by Elsa Reyes against Graciela Eleazar, AFP-MBAI lodged a separate complaint for estafa and a violation of BP 22 against Elsa Reyes with the office of the city prosecutor of Quezon city docketed as I.S. 92-926. The affidavit of Gudelia Dinapo a member of the investigating committee formed by AFP-MBAI to investigate the anomalies committed by Eurotrust/Reyes, shows that between August 1989 and September 1990, Eurotrust offered to sell to AFP-MBAI various marketable securities, including government securities, such as but not limited to treasury notes, treasury bills, Land Bank of the Philippines Bonds and Asset Participation Certificates.

Relying on a canvass conducted by one of its employees, Cristina Cornista, AFP-MBAI decided to purchase several securities amounting to ₱120,000,000.00 from Eurotrust. From February 1990 to September 1990, a total of 21 transactions were entered into between Eurotrust and AFP-MBAI. Eurotrust delivered to AFP-MBAI treasury notes amounting to ₱73 million. However, Eurotrust fraudulently borrowed all those treasury notes from the AFP-MBAI for purposes of verification with the Central Bank. Despite AFP-MBAIs repeated demands, Eurotrust failed to return the said treasury notes. Instead it delivered 21 postdated checks in favor of AFP-MBAI which were dishonored upon presentment for payment. Eurotrust nonetheless made partial payment to AFP-MBAI amounting to ₱35,151,637.72. However, after deducting this partial payment, the amounts of ₱73 million treasury notes with interest and ₱35,151,637.72 have remained unpaid. Consequently, AFP-MBAI filed with the Office of the City Prosecutor of Quezon City a complaint for violation of BP 22 and estafa against Elsa Reyes.

Reyes interposed the defense of novation and insisted that AFP-MBAIs claim of unreturned ₱73 million worth of government securities has been satisfied upon her payment of ₱30 million. With respect to the remaining ₱43

million, the same was paid when Eurotrust assigned its Participation Certificates to AFP-MBAI.

Eventually, the Office of the City Prosecutor of Quezon City issued a resolution recommending the filing of an information against Reyes for violation of BP 22 and estafa.

Whereupon, Reyes filed a petition for review with respondent Secretary of Justice. The latter dismissed the petition on the ground that only resolutions of the prosecutors dismissing criminal complaints are cognizable for review by the Department of Justice.[2]

On February 2, 1994, petitioner seeking the nullification of either of the two resolutions of the respondent Secretary of Justice filed a petition for *certiorari*, prohibition and *mandamus*[3] with the respondent court which, however, denied and dismissed her petition. Her motion for reconsideration[4] was likewise denied in a Resolution[5] dated June 27, 1995. Hence, this present petition.

The first Department of Justice Resolution dated January 23, 1992 which sustained the Provincial Prosecutors decision dismissing petitioners complaints against respondent Eleazar for violation of B.P. 22 and estafa ruled that the contract of loan between petitioner and respondent Eleazar had been novated when they agreed that respondent Eleazar should settle her firms (BERMIC) loan obligations directly with AFP-MBAI and DECS-IMC instead of settling it with petitioner Reyes. This finding was affirmed by the respondent court which pointed out that the first contract was novated in the sense that there was a substitution of creditor[6] when respondent Eleazar, with the agreement of Reyes, directly paid her obligations to AFP-MBAI.

We cannot see how novation can take place considering the surrounding circumstances which negate the same. The principle of novation by substitution of creditor was erroneously applied in the first questioned resolution involving the contract of loan between petitioner and respondent Eleazar.

Admittedly, in order that a novation can take place, the concurrence of the following requisites[7] is indispensable:

1. there must be a previous valid obligation,

2. there must be an agreement of the parties concerned to a new contract,

3. there must be the extinguishment of the old contract, and

4. there must be the validity of the new contract.

Upon the facts shown in the record, there is no doubt that the last three essential requisites of novation are wanting in the instant case. No new agreement for substitution of creditor was forged among the parties concerned which would take the place of the preceding contract. The absence of a new contract extinguishing the old one destroys any possibility of novation by conventional subrogation. In including that a novation took place, the respondent court relied on the two letters dated March 19, 1991,[8] which, according to it, formalized petitioners and respondent Eleazars agreement that BERMIC would directly settle its obligation with the real owners of the funds - the AFP MBAI and DECS IMC.[9] Be that as it may, a cursory reading of these letters, however, clearly and unmistakably shows that there was nothing therein that would evince that respondent AFP-MBAI agreed to substitute for the petitioner as the new creditor of respondent Eleazar in the contract of loan. It is evident that the two letters merely gave respondent Eleazar an authority to directly settle the obligation of petitioner to AFP-MBAI and DECS-IMC. It is essentially an agreement between petitioner and respondent Eleazar only. There was no mention whatsoever of AFP-MBAIs consent to the new agreement between petitioner and respondent Eleazar much less an indication of AFP-MBAIs intention to be the substitute creditor in the loan contract. Well settled is the rule that novation by

substitution of creditor requires an agreement among the three parties concerned - the original creditor, the debtor and the new creditor.[10] It is a new contractual relation based on the mutual agreement among all the necessary parties. Hence, there is no novation if no new contract was executed by the parties. Article 1301 of the Civil Code is explicit, thus:

> Conventional subrogation of a third person requires the consent of the original parties and of the third person.

The fact that respondent Eleazar made payments to AFP-MBAI and the latter accepted them does not *ipso facto* result in novation. There must be an express intention to novate - *animus novandi.*[11] Novation is never presumed.[12] Article 1300 of the Civil Code provides *inter alia* that conventional subrogation must be clearly established in order that it may take effect.

Notwithstanding our disagreement with the decision of the respondent court and the ruling of the Secretary of Justice that a novation by substitution of creditor has taken place, we opt not to disturb the Resolution of the respondent Secretary of Justice dated January 23, 1992 finding a *prima facie* case against the petitioner in as much as it had already become final. It appears that petitioner filed two motions for reconsideration to the said resolution, the first one on February 6, 1992 and the second one in June 2, 1992. These two motions were, however, denied by the respondent Secretary of Justice, the last denial was contained in a Resolution dated June 25, 1992 which was received by petitioner on July 9, 1992. Petitioner made no prompt attempt to question the said resolutions before the proper forum. It took her almost seventeen months (from July 9, 1992 to February 2, 1994) to challenge the January 23, 1992 Resolution when she filed the petition for *certiorari* with the respondent court on February 2, 1994,[13] which resolved to affirm the aforesaid resolution of the Secretary of Justice.

Petitioner who chose her forum but unfortunately lost her claim is bound by such adverse judgment on account of finality of judgment, otherwise, there would be no end to litigation. Litigation must end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause therein should be laid at rest.[14] While the respondent Secretary of Justice was in error in applying the rule on novation in the January 23, 1992 Resolution, such irregularity, however, does not affect the validity of the proceedings in the Department of Justice. Erroneous application of a legal principle cannot bring a judgment that has already attained the status of finality to an absolute nullity under the well entrenched rule of finality of judgment. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that at the risk of occasional error, the judgment of court and award of quasi-judicial agencies must become final at some definite date fixed by law.[15]

We find no plausible explanation nor justifiable reason offered by petitioner for the obvious delay or omission to take a timely action against the questioned resolution. She is apparently guilty of laches which bars her from seeking relief in a court of law after she intentionally and unreasonably fails to guard of her rights. Laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exerting due diligence could/should have been done earlier.[16] Petitioners omission to assert her right to avail of the remedies in law within a reasonable time warrants a presumption that she abandoned it or declined to assert it. The law serves those who are vigilant and diligent and not those who sleep when the law requires them to act.[17]

It bears emphasis that the above pronouncement we laid down applies only *pro hac vice.* This Court in affirming the questioned resolution despite the erroneous application of a legal principle acted according to what the peculiar circumstances of the instant case demand. Its factual setting led us to consider that to sustain the resolution is but the proper action to take in this particular case.

Regarding the second Resolution of respondent Secretary of Justice dated January 12, 1993 which affirms the City Prosecutors finding of a *prima facie* case against petitioner for violation of B.P. Blg. 22 and estafa involving the contract of sale of securities, petitioner avers that she could not be

held criminally liable for the crime charged because the contract of sale of securities between her and respondent AFP-MBAI was novated by substitution of debtor. According to petitioner, the obligation assumed by respondent Eleazar pursuant to the authority given by her to respondent Eleazar in a letter dated March 19, 1991 was precisely her (petitioners) obligation to respondent AFP-MBAI under the contract of sale of securities. She claims that private respondent Eleazar, instead of fulfilling her obligation under the contract of loan to pay petitioner the amount of debts, assumed petitioners obligation under the contract of sale to make payments to respondent AFP-MBAI directly.[18]

This contention is bereft of any legal and factual basis. Just like in the first questioned resolution, no novation took place in this case. A thorough examination of the records shows that no hard evidence was presented which would expressly and unequivocably demonstrate the intention of respondent AFP-MBAI to release petitioner from her obligation to pay under the contract of sale of securities. It is a rule that novation by substitution of debtor must always be made with the consent of the creditor.[19] Article 1293 of the Civil Code is explicit, thus:

> Novation which consists in substituting a new debtor in the place of the original one, may be made even without or against the will of the latter, **but not without the consent of the creditor**. Payment by the new debtor gives him the rights mentioned in Articles 1236 and 1237.

The consent of the creditor to a novation by change of debtor is as indispensable as the creditors consent in conventional subrogation in order that a novation shall legally take place. The mere circumstance of AFP-MBAI receiving payments from respondent Eleazar who acquiesced to assume the obligation of petitioner under the contract of sale of securities, when there is clearly no agreement to release petitioner from her responsibility, does not constitute novation, at most, it only creates a juridical relation of co-debtorship or suretyship on the part of respondent Eleazar to the contractual obligation of petitioner to AFP-MBAI and the latter can still enforce the obligation against the petitioner. In Ajax Marketing and Development Corporation *vs.* Court of Appeals,[20] which is relevant in the instant case, we stated that -

> In the same vein, to effect a subjective novation by a change in the person of the debtor, it is necessary that the old debtor be released expressly from the obligation, and the third person or new debtor assumes his place in the relation. There is no novation without such release as the third person who has assumed the debtors obligation becomes merely a co-debtor or surety. XXX. Novation arising from a purported change in the person of the debtor must be clear and express XXX.

In the civil law setting, *novatio* is literally construed as to make new. So it is deeply rooted in the Roman Law jurisprudence, the principle - *novatio non praesumitur* - that novation is never presumed. At bottom, for novation to be a jural reality, its *animus* must be ever present, *debitum pro debito* basically extinguishing the old obligation for the new one.

The foregoing elements are found wanting in the case at bar.

ACCORDINGLY, finding no reversible error in the decision appealed from dated May 12, 1995, the same is hereby AFFIRMED in all respects.

SO ORDERED.

Regalado (Chairman), Romero, Puno, and *Mendoza, JJ.,* concur.

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[1] Penned by Associate Justice Angelina Sandoval Gutierrez and concurred in by Associate Justices Emeterio Cui and Conrado Vasquez, Jr.

[2] Decision, pp. 2-5; *Rollo*, pp. 83-86.

[3] *Rollo*, pp. 52-80.

[4] *Rollo*, pp. 92-102.

[5] *Rollo*, p. 91.

[6] Decision, p. 6; *Rollo*, p. 87.

[7] Tiu Siuco *vs.* Habana, No. 21106; 45 Phil. 707.

[8] *Rollo*, pp. 272-275.

[9] Decision, p. 3; *Rollo*, p. 84.

[10] 8 Manresa 447, cited in Commentaries and Jurisprudence on the Civil Code of the Philippines, Tolentino, 1985 Ed., Volume 4, p. 402.

[11] Tui Siuco *vs.* Habana, *supra*; La Tondea, Inc. *vs.* Alto Surety and Ins. Co., 101 Phil. 879 No. L-10132.

[12] Pacific Commercial Co. *vs.* Sotto, 34 Phil. 237 No. 10578; Martinez *vs.* Cavives, 25 Phil. 581 No. 7663; Goni *vs.* CA, 144 SCRA 222 No. L-27434.

[13] *Rollo*, pp. 120-136.

[14] Zansibarian Residents *vs.* Makati, 135 SCRA 235 No. L-62136; Gonzales *vs.* Hon. Secretary, 116 SCRA 575 No. L-49524.

[15] Soliven *vs.* WCC, No. L-44763, Malijan *vs.* WCC, No. L-45381, 77 SCRA 518; Carreon *vs.* WCC, No. L-43307, 77 SCRA 297.

[16] La Campana Food Products *vs.* CA, 223 SCRA 151, G. R. No. 88246.

[17] Marcelino *vs.* CA, 210 SCRA 444, G.R No. 94422.

[18] *Rollo*, p. 70.

[19] Testate Estate of Mota *vs.* Serra, 47 Phil. 465, No. 22825.

[20] 248 SCRA 223, G.R. No. 118585, Sept. 14, 1995.